

**TOWN OF DAVIE  
TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Will Allen, Redevelopment Administrator 954-797-2093

**PREPARED BY:** Will Allen

**SUBJECT:** Approving Reciprocal License Agreement Between Town Of Davie And Summerlake Apartments, LTD.

**AFFECTED DISTRICT:** District 1

**ITEM REQUEST:** Schedule for Council Meeting

**TITLE OF AGENDA ITEM:** AGREEMENT - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA APPROVING A RECIPROCAL LICENSE AGREEMENT BETWEEN THE TOWN OF DAVIE AND SUMMERLAKE APARTMENTS, LTD., AUTHORIZING THE MAYOR TO EXECUTE THE RESOLUTION, AND PROVIDING FOR AN EFFECTIVE DATE.

**REPORT IN BRIEF:** This item is related to the drainage improvements being installed on the east side of Davie Road. These improvements are being paid for by the Davie CRA but the improvements will belong to and will be maintained by the Town of Davie. The first phase of the improvements is to install a storm sewer primarily along SW 41 Place which will terminate at L Lake and there will be an outfall from the lake to the overall canal drainage system. L Lake is partially owned by the Town of Davie and by Summerlake Apartments, LTD. Summerlake Apartments is an affordable housing complex built on the south side of the lake. In obtaining permits for the installation of these improvements there was a comment from the South Florida Water Management District which required that there be some sort of agreement which permits the flow of water within the lake to be used by each of the two parties. The attached resolution approves a reciprocal license between the two parties to store and manage water and provide drainage to adjacent properties. This license will be provided to the South Florida Water Management District as the required back up to allow the permitting of this project. The reciprocal agreement was prepared by both the Town Attorney and CRA Attorney.

**PREVIOUS ACTIONS:** None

**CONCURRENCES:** None

**FISCAL IMPACT:** not applicable

Has request been budgeted? n/a

**RECOMMENDATION(S):** Approve Resolution

**Attachment(s):** Resolution, reciprocal License Agreement Between Town Of Davie And Summerlake, Apartments, LTD

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA APPROVING A RECIPROCAL LICENSE AGREEMENT BETWEEN THE TOWN OF DAVIE AND SUMMERLAKE APARTMENTS, LTD., AUTHORIZING THE MAYOR TO EXECUTE THE RESOLUTION, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Davie in cooperation with the Davie Community Redevelopment Agency is installing storm sewers and other infrastructure improvements on the east side of Davie Road, and

WHEREAS, L Lake is an integral part of the installation of these storm sewers for the purpose of providing storage for the area and L Lake is owned jointly by the Town of Davie and Summerlake Apartments, LTD., and

WHEREAS, the South Florida Water Management District is requiring an agreement for the storage of water and managing storm water between the two owners of this commonly owned lake:

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town of Davie does hereby approve a Reciprocal License Agreement between the Town of Davie and Summerlake Apartments, LTD.

SECTION 2. The Mayor is authorized to affix his signature to said Resolution.

SECTION 3. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008.

\_\_\_\_\_  
MAYOR/COUNCILMEMBER

ATTEST:

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008

**This instrument prepared by:**

Susan F. Delegal, Esq.  
Billing, Cochran, Lyles, Mauro & Ramsey, P.A.

**SunTrust Center, Sixth Floor**

**515 East Las Olas Boulevard**

**Fort Lauderdale, FL 33301**

Record and return to:

Susan F. Delegal, Esq.  
Billing, Cochran, Lyles, Mauro & Ramsey, P.A.

**SunTrust Center, Sixth Floor**

**515 East Las Olas Boulevard**

Fort Lauderdale, FL 33301

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RECIPROCAL LICENSE

AGREEMENT BETWEEN

TOWN OF DAVIE

AND

SUMMERLAKE APARTMENTS, LTD

THIS RECIPROCAL LICENSE AGREEMENT, is entered into this \_\_\_\_ day of \_\_\_\_\_, 2008, by and between SUMMERLAKE APARTMENTS, LTD, a Florida Limited Partnership (“SUMMERLAKE”), whose address is \_\_\_\_\_, and the TOWN OF DAVIE, Florida, a municipal corporation (“TOWN”), and constitutes a Reciprocal License.

WHEREAS, the parties hereto jointly own the Property ("Property") known as "L" Lake, the description of which and sketch thereof are attached hereto as Exhibit "A"; and

WHEREAS, the Property serves as a water management, storage, and drainage facility for adjacent properties including those owned by SUMMERLAKE and residents and property owners of the Town of Davie; and

WHEREAS, attached as Exhibit "B" is a legal description and sketch depicting that portion of the Property owned by SUMMERLAKE; and

WHEREAS, attached as Exhibit "C" is a legal description and sketch depicting that portion of the Property owned by the TOWN; and

WHEREAS, the parties deem it be in their mutual interest to enter into this Reciprocal License Agreement relating to the flow of water for storm water management, storm water runoff and other drainage purposes between their respective portions of the Property.

**NOW THEREFORE**, in consideration of the mutual terms, conditions, premises and covenants hereinafter set forth, SUMMERLAKE and TOWN agree as follows:

**1. Use of Property.** SUMMERLAKE and the TOWN may each jointly use and occupy the Property for the purpose of storm water management and drainage. Each party shall be entitled to provide for the flow of water from its respective portion of the Property onto the portion of the Property owned by the other party for the purpose of storing and managing storm water and providing drainage to adjacent properties, including maintenance of the Property consistent with the use contemplated by this Reciprocal License Agreement. The Property shall not be used for any other purpose whatsoever without written consent of the other party. The parties agree that no nuisance or hazardous use shall be permitted or carried on, in or upon the Property, no act shall be permitted, and nothing shall be kept in or about said Property which will increase the risk of any hazard or catastrophe. The parties will not permit the Property to be used or occupied in any manner that will violate any laws or regulations of any governmental authority.

**2. Indemnification.** SUMMERLAKE and, to the extent permitted by law, the TOWN will each indemnify, defend and hold harmless the other party, its officers, agents and employees from and against any and all claims, suits, actions, damages, liabilities, expenditures, or causes of action of any kind arising from this Reciprocal License Agreement and resulting or accruing from any act, omission, default or negligence of the indemnifying party resulting in, or relating to, injuries to body, life, limb, or property sustained in, about or upon the Property, or arising from the use of the Property. Nothing in the Agreement shall be construed to limit the rights, privileges or immunities accorded to TOWN by Florida Statutes, Section 768.28.

3. **Insurance.** SUMMERLAKE shall provide, pay for, and maintain in force, at all times during the term of this Agreement, Comprehensive General Liability insurance with minimum limits of One Million (\$1,000,000.00) Dollars per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall be provided without restrictive endorsements, and must include coverage for premises/operations, contractual operations, independent contractors, broad form property damage, and broad form contractual coverage applicable to this Agreement and specifically confirming the indemnification and hold harmless obligation contained in this Agreement. The policy(ies) must be endorsed to provide the TOWN with thirty (30) days advance notice of cancellation. SUMMERLAKE shall provide the TOWN with a copy of such insurance policy(ies) or, in the alternative, a certificate evidencing compliance with the requirements of this Section.

The TOWN shall self insure the obligations undertaken in this Agreement in an amount not to exceed One Million (\$1,000,000.00) Dollars and shall maintain cash reserves in such amount.

4. **Compensation.** No payment shall be made by either SUMMERLAKE or the TOWN for the privileges granted herein.

5. **Notice of Accident or Occurrence.** Each party shall give the other prompt written notice by certified or registered mail of any occurrence, incident or accident occurring on the Property.

6. **Maintenance of Property.** It shall be the responsibility of each party to keep the portion of the Property owned by it clean and free from trash and debris. The upkeep and maintenance of all areas shall be borne by the respective parties in accordance with the terms and conditions of this Agreement and consistent with prudent and well-reasoned maintenance procedures and techniques.

7. **Applicable Law and Venue.** This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for litigation concerning this Agreement shall be in Broward County, Florida.

8. **Term.** This is a Reciprocal License Agreement, the term of which shall continue in perpetuity.

9. **Right of Use.** This Reciprocal License Agreement is merely a right to use, and grants no estate in the premises.

10. **Enforcement.** The terms of this Agreement may be enforced by either party through an action at law or in equity, as appropriate.

**11. Amendments.** No modification, amendment or alteration of the terms or conditions contained herein shall be effective unless contained in a written document executed by the parties hereto, with the same formality and of equal dignity herewith.

**12. Severability.** In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless TOWN or SUMMERLAKE elect to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

**13. Priority of Provisions.** If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any documents or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in this Agreement shall prevail and be given effect.

**14. Prior Agreements.** This document incorporates and includes all prior negotiations, correspondence, conversations, Agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, Agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or Agreements, whether oral or written.

**15. Waiver of Breach and Materiality.** Failure by either party to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement. The TOWN and SUMMERLAKE agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

**16. Compliance With Laws.** Each party shall comply with all federal, state and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this Agreement.

**17. Notices.** Any notice or demand, which under the terms of this Reciprocal License Agreement or by any statute or ordinance, given or made by a party hereto shall be in writing and shall be given by certified or registered mail sent to the other party at the address set forth below, or to such other address as such party may from time to time designate by notice.

Notice to the TOWN shall be addressed to:



TOWN OF DAVIE  
Town Administrator  
6591 Orange Drive  
Davie, Florida 33314  
Telephone No. (954) 797-1030  
Fax No. (954) 797-1200

With a copy to:  
Town Attorney  
John Rayson, Esq.  
2400 East Oakland Park Boulevard  
Fort Lauderdale, Florida 33306

Notice to SUMMERLAKE shall be addressed to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**18. Recordation.** This Agreement shall be recorded in the Public Records of Broward County.

**[THIS SPACE INTENTIONALLY LEFT BLANK]**

**RECIPROCAL LICENSE AGREEMENT BETWEEN TOWN OF DAVIE AND  
SUMMERLAKE APARTMENTS, LTD**

**IN WITNESS WHEREOF**, the parties hereto have executed this Reciprocal License Agreement as of the date first above written.

Witnesses as to SUMMERLAKE

\_\_\_\_\_

(Print Name)

\_\_\_\_\_

(Print Name)

SUMMERLAKE APARTMENTS, LTD  
a Florida limited partnership

By: \_\_\_\_\_

STATE OF \_\_\_\_\_)  
SS:  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2008, by \_\_\_\_\_ who is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

\_\_\_\_\_  
Print or Type Name of Notary Public

My commission expires:

**RECIPROCAL LICENSE AGREEMENT BETWEEN TOWN OF DAVIE AND  
SUMMERLAKE APARTMENTS, LTD**

FLORIDA

TOWN OF DAVIE,

ATTEST:

By:\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

Witnesses:

\_\_\_\_\_  
\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
\_\_\_\_\_  
(Print Name)

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

\_\_\_\_\_  
John Rayson, City Attorney